No. 85-1553

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHURCH OF SCIENTOLOGY FLAG SERVICE ORG., INC.,

Petitioner,

—against—

CITY OF CLEARWATER, THOMAS BUSTIN, City Attorney of the City of Clearwater, and LUCILLE WILLIAMS, City Clerk of the City of Clearwater,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

1. Whether federal courts are required to hear and decide facial overbreadth challenges to municipal ordinances which impose impermissable restrictions on the free exercise of religion, where the facts conferring standing to raise such a challenge are both sufficient and undisputed.

2. Whether a local ordinance which, requires churches to obtain permits before soliciting donations from their own members on their own premises, mandates specific forms of religious doctrine and policy and, requires churches to submit to massive reporting and disclosure requirements unrelated to any legitimate governmental interest, is constitutional on its face.

Parties to the Proceedings Below

The parties to the proceedings in the United States Court of Appeals for the Eleventh Circuit were:

The Church of Scientology Flag Service Org., Inc.

Americans United For Separation of Church and State

City of Clearwater, Florida

Thomas Bustin, City Attorney of the City of Clearwater

Lucille Williams, City Clerk of the City of Clearwater

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No. 85-

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OCTOBER TERM, 1985

CHURCH OF SCIENTOLOGY FLAG SERVICE ORG., INC.,

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—against—

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Church of Scientology Flag Service Org., Inc. (the "Church") hereby petitions that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Eleventh Circuit in so far as that decision vacated the court of appeals' prior order granting the Church leave to appeal pursuant to 28 U.S.C. § 1292(b), on the ground that there were insufficient facts in the record to establish the Church's standing to bring a facial challenge to Ordinance No. 3479-84 and, in so far as that decision declined to review the merits of the Church's challenge.

Opinions Below

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 777 F.2d 598. (App. A,

A1-A49). The opinion of the district court on the facial validity of Ordinance No. 3479-84 is not reported. (App. D, D1-D16). The opinion of the district court on the facial validity of Ordinance No. 3091-83 is not reported. (App. B, B1-B23).

Jurisdiction

The opinion of the court of appeals was issued on November 13, 1985.[1] On December 19, 1985, the court of appeals denied the Church of Scientology Flag Service Org., Inc.'s petition for rehearing and suggestion for rehearing *en banc*. (App. I, I1-I2). This petition is being filed within ninety days of the denial of the petition for rehearing. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

Constitutional Provisions and Ordinances Involved

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article III Section 2 of the United States Constitution provides in pertinent part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . .

Clearwater Ordinance No. 3479-84 is reproduced in its entirety in Appendix J to this Petition.

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[1] The court did not enter a judgment on its decision in this case because its opinion vacated the order that granted permission to appeal under 28 U.S.C. § 1292(b).

Statement of the Case

In March of 1984, the City of Clearwater, Florida enacted Ordinance No. 3479-84. This ordinance, which purports to regulate charitable solicitations in the City of Clearwater is unique in modern American History in the manner in which it intrudes into the relationship between churches and their members, in which it mandates particular forms of church governance and in which it authorizes comprehensive state surveillance of internal church activities and expenditures.

Unlike every other solicitation ordinance presently in effect throughout this nation, Ordinance No. 3479-84 requires churches to obtain licenses prior to soliciting contributions from their own *members* on their own premises. As part of this licensing scheme, churches must report on and account to the City for all such contributions solicited from members, and provide detailed information concerning the amount, nature and purpose of all expenditures made by the church, and the names, addresses and telephone numbers of all persons involved in the solicitation and disbursements of funds. Section 100.03 (J20-J35).[2] Further, the ordinance requires that all churches which give refunds of money solicited establish a written policy setting forth the terms and conditions under which a refund will be granted and that the church comply with the refund requirements within sixty days. Section 100.05(f) and (g). (J41-J42).

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[2] As an alternative, churches may obtain a license to raise funds from their own members by making such information available directly to their members, and not in their license application. A member may complain to the City if he believes that his church has not provided sufficient or accurate information, whereupon the City may investigate, including by compulsory process, the financial affairs of the church to determine if it has complied. Sections 100.02(3) and 100.06. (J18-J20, J45-J48).

Aside from its intrusive regulation of matters which rightly concern only the church and its members, Ordinance No. 3479-84 imposes massive recordkeeping and disclosure requirements on churches as a condition for soliciting donations from the public in Clearwater. Section 100.03. (J20-J35). In order to satisfy these requirements an organization must disclose, *inter alia,* the names, addresses, and telephone numbers of all persons soliciting funds or responsible for their disbursement; a brief description of the organization; the purpose of the solicitation and an "explanation of the intended use of the funds toward that purpose"; the "methods and means" of solicitation; a schedule "of salaries, wages, fees, commissions, expenses and costs" to be expended not only in the solicitation of the funds, but also "in connection with their disbursement"; a list of all other cities in Florida in which the organization has collected funds over the previous five years; as well as additional information. Section 100.03 (1)(a-o). (J21-J28). Moreover, the City does not require this information solely with respect to solicitations by churches for specific identified charitable purposes; rather churches must account for each and every solicitation and disbursement of funds raised to support the day-to-day operations of the church itself.

Finally, Ordinance No. 3479-84 does not define the conditions under which the City Clerk can grant or deny permit applications, section 100.03(2) and (3), (J28-J31), and empowers the City Attorney to launch searching investigations into the internal affairs of churches and other First Amendment organizations without any limits or standards set on this authority. In furtherance of such investigations, the ordinance authorizes the City Attorney not only to subpoena persons, records and documents, without court order, and to make these documents available to the public, but to inquire into the motives of churches in soliciting contributions. Section 100.06. (J44-J48).

Procedural History

Ordinance No. 3479-84 was not the first charitable solicitation ordinance to be enacted by the City of Clearwater.

In 1983, after almost two years of debate, the City adopted its first charitable solicitation ordinance, Ordinance No. 3091-83. That ordinance, like its successor Ordinance No. 3479-84, the subject of the instant petition, was directed principally at the Church of Scientology which maintains its international center for the provision of its highest levels of religious services in Clearwater.

In January of 1984, just prior to the effective date of Ordinance No. 3091-83, the Church filed a verified complaint[3] in the United States District Court for the Middle District of Florida, seeking an order enjoining the enforcement of the ordinance on the grounds that it was unconstitutional on its face and as applied.[4]

The Church then moved for a temporary restraining order[5] and a preliminary injunction. In March of 1984, the court held a hearing on the Church's motion for a preliminary injunction which was limited to the Church's facial challenge.[6] The evening before post-hearing memo-

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[3] A virtually identical challenge to Ordinance No. 3091-83 was filed by Americans United For Separation of Church and State (hereinafter "Americans United"). Americans United's case was heard together with the Church's challenge to Ordinance No. 3091-83 both in the district court and in the court of appeals. The court of appeals' decision in Americans United's case, No. 84-3236, however is not at issue herein.

[4] The Church's claim was brought pursuant to 42 U.S.C. § 1983. The district court's jurisdiction over these claims was conferred by 28 U.S.C. § 1331 (1982) and 28 U.S.C. § 1343(a)(3) (1982).

[5] The City agreed not to enforce the ordinance pending a determination of the Church's motion for a preliminary injunction.

[6] At this hearing, the City initially expressed some reservations about the Church's standing to litigate its claims arising under the religion clauses of the First Amendment. At the conclusion of the hearing it retracted its reservation and conceded the Church's standing to raise all of its claims.

randa were due to the court on the question of the ordinance's facial validity, the City, without any prior notice to the court or the parties, amended Ordinance No. 3091-83 by enacting Ordinance No. 3479-84.[7] Due to the temporary nature of Ordinance No. 3479-84, the district court ruled on the constitutionality of the original ordinance, finding it unconstitutional on its face. The court found that Ordinance No. 3091-83 was unconstitutional because, *inter alia*, it regulated solicitations by churches of their own members on their own premises. In so holding the Court stated:

> Regulations concerning solicitations must be limited to those solicitations of the public in public places. *International Society of Krishna Consciousness of Houston, Inc.* v. *City of Houston, Texas,* 685 F.2d 541 (5th Cir. 1982). Regulation of solicitations on the premises of a church or political association is not necessary because that activity could not disturb the public; there is not a danger of misrepresentation in those solicitations, by the organization for which contributions were sought. See City of Houston, supra at 562.

(B13).

Subsequently, the Church filed a supplemental complaint challenging the constitutionality of Ordinance No. 3479-84 on its face and as applied. (This case was assigned Court of Appeals No. 84-3574.)[8] The Church alleged the following facts to establish its standing to sue:

> 7. Plaintiff, Church of Scientology Flag Service Org., Inc. (hereinafter the "Church"), is a religious organ-

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[7] Ordinance No. 3479-84 was originally enacted as an emergency ordinance which would automatically expire at the end of ninety days if not passed as a non-emergency ordinance within that time.

[8] Americans United also filed a supplemental complaint challenging the new ordinance. Again the Eleventh Circuit's decision in Americans United's case, No. 84-3575, is not at issue herein.

> ization that maintains and operates a facility exclusively for religious training and spiritual counselling in the City of Clearwater. It follows, adheres to, and teaches the religious beliefs and practices of the religion of Scientology. All of its religious activities in the City of Clearwater are directed toward its members who come to the Church to avail themselves of the spiritual services offered here. It makes no attempt to solicit contributions from the general public of the City of Clearwater. It does, however, advertise and sell religious books and pamphlets about the religion of Scientology to members of the general public.
>
> 83. Defendants expressed intention to enforce the ordinance against Plaintiff has caused and continues to threaten irreparable harm to the First Amendment rights of the Plaintiff and its members to engage in dissemination of their religious ideas and philosophy and to practice their religious faith. . . .

(These identical facts were alleged by the Church in its original complaint challenging Ordinance No. 3091-83.) The City of Clearwater never filed an answer to the Church's complaint.

On July 13, 1984 the court, on its own motion, convened a hearing on the facial validity of the amended ordinance. At this hearing, the court asked the City whether it was challenging the Church's standing. The City's attorney replied without reservation: "we are not contesting standing today." (D8). At the conclusion of the hearing the court issued an oral ruling, finding the amended ordinance facially constitutional. The court gave no reasons or explanation for her conclusion. (D9-D16). Moreover, this ruling was particularly surprising since, as we demonstrate below, the amended ordinance suffered from the same constitutional flaw which the court had found rendered the original ordinance unconstitutional, *i.e.*, it regulates solici-

tations by churches of their own members on their own premises.

Ten days later, the court issued an order holding—again without a word of explanation—that amended Ordinance No. 3479-84 was facially constitutional, and certifying her ruling for appeal. (App. E, E1-E4). Upon the Church's motion, a panel of the Eleventh Circuit granted leave to appeal and, recognizing the probable merits of the Church's facial constitutional challenge, issued an order enjoining enforcement of the ordinance in its entirety pending the appeal.

On appeal, a different panel of the Eleventh Circuit reversed the prior panel's grant of leave to appeal, finding that the Church's challenge to the facial constitutionality of the statute was not ripe for review, (A41), because the district court had "answered a hypothetical, abstract question of law" and thus "an appellate ruling on the facial validity of the new ordinance would be purely advisory." (A45). The only articulated basis for the court of appeals' conclusion was that there purportedly was no evidence in the record regarding the Church's standing to bring its constitutional challenge, (A42-A43), and that there was no evidentiary or factual background in which to determine the facial constitutionality of the amended ordinance, (A44-A46).

In so ruling, the court of appeals not only ignored the undisputed facts in the record and fundamental principles of standing in the context of facial challenges brought under the First Amendment, but more importantly it declined to address the paramount and pressing issues of constitutional law presented by the merits of the Church's appeal.

Reasons for Granting Writ

1. As the mere description of Ordinance No. 3479-84 demonstrates, the Clearwater Ordinance is unique among charitable solicitation ordinances enacted by other states and localities, in its intrusion on, and violation of, the rights guaranteed by the First Amendment. As demonstrated in Point 2 below, not only does the ordinance violate the Establishment and Free Exercise Clauses of the First Amendment, but it regulates substantial amounts of protected activity and vests such unbridled discretion in City Officials that it is easily subject to arbitrary and discriminatory enforcement. Indeed, it is precisely because of ordinances like Ordinance No. 3479-84, that this Court has developed prudential standing principles to encourage and allow facial challenges to ordinances, in an effort to ensure that the "delicate", "vulnerable" and "supremely precious" First Amendment rights are given the "breathing space to survive." *NAACP* v. *Button,* 371 U.S. 415, 433 (1963).

Despite a clear mandate by this Court to closely scrutinize ordinances on their face which so seriously infringe on and chill First Amendment freedoms, the court of appeals has avoided its duty and refused to address the merits of the Church's facial challenge. As a result, Ordinance No. 3479-84, already in effect for two full years, remains in force today and continues to threaten the exercise of First Amendment rights.

In support of its decision not to address the merits of the Church's challenge to the facial validity of Ordinance No. 3479-84, the court of appeals found that there were no facts in the record from which to determine whether the Church had standing to mount its challenge. In addition, the court of appeals held that the record was so devoid of factual and evidentiary material, that the district court's ruling was merely a hypothetical ruling of law "unasso-

ciated with the disposition of any claim." (A44). Finally, the court cited "the deeply rooted doctrine that questions of constitutionality not be reached unless strictly necessary", (A46), as a justification for avoiding review on the merits.

The court of appeals' holding seriously contravenes over forty years of precedent established by this Court regarding the nature of the facts required to establish standing and to adjudicate a facial challenge to an ordinance which, like Ordinance No. 3479-84, substantially regulates protected First Amendment activity. Recognizing that "the possible harm to society from allowing unprotected speech to go unpunished is outweighed by the possibility that protected speech may be muted", *Bates* v. *State Bar of Arizona,* 433 U.S. 350, 380 (1977), this Court has relaxed the standing requirements for facial challenges to ordinance which regulate First Amendment activity.

In order to bring a facial challenge to such an ordinance, a litigant need not establish that his/her own activity which is regulated by the challenged ordinance is protected. *Schaumburg* v. *Citizens For Better Environment,* 444 U.S. 620, 633-634 (1980); *Bigelow* v. *Virginia,* 421 U.S. 809, 815-817 (1975); *Grayned* v. *City of Rockford,* 408 U.S. 104, 114-121 (1972); *Gooding* v. *Wilson,* 405 U.S. 518, 520-522 (1972). Rather, because "facial challenges to overly broad statutes are allowed not primarily for the benefit of the litigant, but for the benefit of society—to prevent the statute from chilling the First Amendment rights of other parties not before the court"—a plaintiff's ability to mount such a challenge "has nothing to do with whether or not its own First Amendment rights are at stake. The crucial issues are whether [the plaintiff] satisfies the requirement of 'injury-in-fact' and whether it can be expected satisfactorily to frame the issues in the case." *Secretary of State of Md.* v. *Joseph H. Munson Co.,* 467 U.S. 947, 104 S. Ct. 2839, 2847 (1984). To make a showing of "injury-in-fact" for a facial overbreadth challenge, the

litigant need only prove that the challenged ordinance regulates its conduct and that the state has threatened to enforce the ordinance against it. *Id.* at 2846-48.

It is beyond dispute that the facts in the record before the court of appeals were not only clear and undisputed, but sufficient to satisfy these requirements. In its complaint, the Church pled that it operated in Clearwater, that it solicits from its members and that the City had expressly threatened to enforce the ordinance against it. See Complaint ¶¶ 7 and 83, pp. 6-7, *supra*. Not only were these facts clearly pled by the Church but at no time, either in its papers or in court, did the City contest them. Indeed, to the contrary, the City clearly agreed with these facts by stipulating[9] to the Church's standing at the hearing on the facial validity of Ordinance No. 3479-84.

Moreover, even if the City had not stipulated to these facts it would have been impossible for the City to successfully contest them. First the plain language of the ordinance clearly applies to the Church's activities. See sections 100.01 and 100.02 which define activities regulated by the ordiannce. Further, the City could not deny that

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[9] The Circuit's holding that the district court was not free to rely on this stipulation, (A38, A42-A43), is contrary to accepted practice throughout the courts of this country. *See, e.g., Bookins* v. *O'Bannon*, 699 F.2d 648, 652 n.9 (3d Cir. 1983); *United States* v. *Hernandez*, 668 F.2d 824, 826 (5th Cir. 1982); *Scheinberg* v. *Smith*, 659 F.2d 476 (5th Cir. 1981); *Marion Nat. Bank* v. *The Van Buren Bank*, 418 F.2d 121, 123 (7th Cir. 1969); *Meyers* v. *United States*, 386 F.2d 715, 716 (9th Cir. 1967); *Environmental Study and Protection* v. *Pac*, 464 F. Supp. 143 (D. Conn. 1978); *David* v. *Cahill*, 342 F. Supp. 463 (D.N.J. 1972); *Lamb Enterprises, Inc.* v. *Toledo*, 324 F. Supp. 134 *aff'd* 437 F.2d 59 (N.D. Ohio 1971); *Cf. Wisconsin* v. *Yoder*, 406 U.S. 205, 209 (1972) (state stipulated to sincerity of respondents' religious beliefs).

Of course, there are situations in which such stipulations are ineffective, such as where parties stipulate to facts that are untrue or they stipulate to standing on the basis of a misapprehension of law. *See, e.g., Nyberg* v. *City of Virginia*, 361 F. Supp. 931 (D. Minn. 1973), *aff'd* 495 F.2d 1342, *appeal dismissed* 419 U.S. 891 (1974). However, neither of these situations exist here.

the Church is, or "holds itself out to be" a "charitable organization" as defined by Section 100.01(1). As noted above, not only did the City enact Ordinance No. 3479-84 for the exclusive purpose of regulating the solicitation activities of the Church, but it has consistently argued throughout this case that the ordinance applies to the Church. Accordingly, to contest these facts would be "logically untenable". *Larson* v. *Valente*, 456 U.S. 228, 240 (1982). (State argued in this Court that the Unification Church did not have standing because it was not a religion under the terms of the challenged ordinance, while at the same time having maintained that the provisions of the ordinance applicable only to religions applied to the Unification Church).

Despite this clear record establishing the Church's standing, the court of appeals held that it was impossible for the district court, and consequently for itself on appeal, to determine whether the Church had standing. In so holding, the court of appeals either seriously misconstrued the factual showing required to satisfy the standing requirements in the context of facial First Amendment challenges, or, understanding the required factual showing, it mysteriously required that these facts be shown by some method other than the verified allegations of the complaint and stipulations of the parties.

If the court of appeals' decision rested on the first alternative, as shown in the aforementioned discussion, it was simply wrong. If it rested on the second, it was similarly incorrect. In numerous First Amendment facial challenges decided by this Court, standing was satisfied merely by resort to the allegations in the complaint and the parties' stipulations. *See, e.g., Munson,* 467 U.S. 947, 104 S. Ct. at 2844, 2846, (factual showing that ordinance applied to plaintiff and that state threatened to so apply it, satisfied by allegations in the complaint and parties' stipulation); *Schaumburg,* 444 U.S. 620, (court decided facial validity

of ordinance on basis of allegations in complaint, additional factual material submitted found to be irrelevant).

The court of appeals' second but related justification for not reaching the merits of the Church's challenge is similarly incorrect. Apparently the court felt that, aside from the facts demonstrating standing, additional facts and evidence were needed to adjudicate the facial validity of the Clearwater Ordinance. Again, this holding betrays a fundamental misunderstanding of the nature of a facial challenge and the role of the federal courts in protecting First Amendment rights. The determination of whether an ordinance violates the First Amendment on its face is a *question of law*. Thus other than the facts required to prove standing, no additional factual material is necessary for resolution of this question. *Schaumburg*, 444 U.S. at 634.[10]

Finally, the court of appeals pointed to a "deeply rooted doctrine" that questions of constitutionality need not be reached unless strictly necessary as justification for its abstention. Again, this statement utterly ignores the nature of the instant challenge and the mandate of this Court. As deeply rooted as this doctrine may be, it has absolutely no bearing in the context of facial challenges brought under the First Amendment, especially where no substan-

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[10] The two circuit court cases cited by the court of appeals, *Nickert* v. *Puget Sound Tug & Barge Co.*, 480 F.2d 1039 (9th Cir. 1973) (*per curiam*); *Okolinsky* v. *Philadelphia, B. & N.E.R. Co.*, 282 F.2d 70 (3rd Cir. 1960), for the opposite proposition are not even arguably on point. Neither case involved a facial challenge brought under the First Amendment. In *Nickert* the Ninth Circuit held that the district court's ruling of *law* regarding defendant's liability for indemnity in a wrongful death action was not appealable under 28 U.S.C. § 1292(b) because it was decided without resolving the factual dispute regarding the issue of liability. In *Okolinsky*, the Third Circuit declined to review a ruling of the district court in an action tried under the Federal Employer's Liability Act and Safety Appliance Act, because the court failed to enter an order and because other issues remained to be tried.

tial questions existed as to the meaning of the municipal ordinance under state law. Indeed, the very purpose of a facial challenge is to be able to reach constitutional issues which otherwise might not be capable of adjudication until a later date. As this Court noted in *Munson,* "when there is a danger of chilling free speech, the concern that constitutional adjudication be avoided whenever possible may be outweighed by society's interest in having the statute challenged." 104 S. Ct. at 2847. Accordingly, all of the justifications posited by the court of appeals for declining to rule on the merits of the Church's challenge are not only incorrect, they seriously undermine the doctrine developed by this Court to encourage and facilitate such challenges.

2. As a result of the court of appeals' improper refusal to adjudicate the fundamental constitutional questions raised by this case, the Church and its members, as well as all Clearwater citizens, have been subjected to the potential infringement of their First Amendment rights by Ordinance No. 3479-84 for over two years. Surely, this was precisely the result that the First Amendment overbreadth and standing doctrines were aimed at avoiding. At this point, the only way to remedy this situation is for this Court to adjudicate the facial validity of Ordinance No. 3479-84.

Ordinance No. 3479-84 violates the First Amendment in a number of equally pernicious ways. Foremost among the intrusions created by Ordinance No. 3479-84 is its regulation of the protected relationship between churches and their own members. Unlike all previous solicitation ordinances enacted by other government entities, Ordinance No. 3479-84 seeks to regulate solicitations by churches and voluntary associations of their own members. Indeed, it is likely that no other City or state has even attempted to regulate such "private" solicitations because analysis

of constitutional doctrine and case law compels the conclusion that such solicitations are entirely immune from government regulation.

This Court has repeatedly recognized the right of individuals to freely form religious and other voluntary associations. *NAACP* v. *Clairborne Hardware Co.*, 458 U.S. 886, 907-909, 932-933 (1982); *Larson* v. *Valente*, 456 U.S. 228, 244-246 (1982); *Abood* v. *Detroit Board of Education*, 431 U.S. 209, 231 (1977). Once formed, the state is precluded from "probing the intimacies of spiritual and intellectual relationships in the myriad of such societies and groups that exist in the country, regardless of the legislative purpose sought to be served. *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539, 565 (1963) (Douglas J. concurring); *see also, Roberts* v. *United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 3252 (1984) (government actions which "try to interfere with the internal organization or affairs of the group" unconstitutionally infringe on the freedom of association).

Clearly, the collection of information pertaining to, and investigation of, church-member solicitations would impermissably intrude upon internal affairs of churches and other voluntary associations. Churches rely on contributions from their members to survive, *Murdock* v. *Pennsylvania*, 319 U.S. 105, 111 (1943), and thus the contribution process itself is frequently built into religious doctrine and practice. Any attempt by the government to investigate or gather information on solicitations made by members to their churches would therefore necessarily require the state to become enmeshed in numerous intricate religious practices and doctrines, in violation of both the Free Exercise and Establishment Clauses. *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979).

Moreover, the provisions of the ordinance which require churches to turn over extensive information about their

internal operating procedures and affairs to any member who asks for this information, section 100.02(3), (J18-J20), and to adopt particular refund policies, section 100.05(1) (f) and (g), (J41-J42), similarly violate the Establishment Clause in two respects.

First, as a matter of church doctrine, many churches which are hierarchally organized do not permit members to know such matters as the salaries of church officials, the aggregate assets of the organization, or the nature and purpose of all church expenditures. Thus, section 100.02(3), (*Id.*), mandates that these churches adopt a particular form of church governance contrary to that which they have selected. The refund provisions similarly attempt to dictate church governance and policy. Both of these provisions therefore, violate the Establishment Clause by requiring the state to become involved in and dictate "matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law." *Serbian Eastern Orthodox Diocese* v. *Milivojevich,* 426 U.S. 696, 813 (1976).

Further, if a dissatisfied church member feels that the church has not complied with the disclosure or refund provisions, he can invoke the power of the state to compel church leaders to govern their churches in accordance with the standards established by the City of Clearwater. For over a century, the courts of this country have held that the state may not intervene to vindicate supposed rights of members or ex-members of a church who claim they were improperly excommunicated, disciplined or induced to join or donate money. *Watson* v. *Jones,* 13 Wall (80 U.S.) 666 (1872); *see also, Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church,* 344 U.S. 94 (1952), recognizing that the *Watson* principal is constitutionally mandated. Indeed, the Framers of the Constitution were well aware that the imposition of state power and authority on the side of various religious factions had caused

centuries of religious wars in Europe, and it was this perilous linkage which they sought to prohibit by the First Amendment. *See Everson* v. *Board of Education,* 330 U.S. 1 (1947). Thus, Ordinance No. 3479-84 creates an unprecedented intrusion into the private and constitutionally protected association of churches and their members.

Even if Ordinance No. 3479-84 did not regulate and intrude on the relationship between members and their churches, it would nevertheless violate both the Free Exercise and Establishment Clauses of the First Amendment. As this Court has frequently recognized, public solicitation by religious or other groups is highly protected activity under the First Amendment, both because it is often an effective method of reaching an audience or of proselytizing and because fundraising is necessary in a practical sense for a church or association to survive. *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940); *Murdock* v. *Pennsylvania,* 319 U.S. 105 (1943); *Schaumburg* v. *Citizens for Better Environment,* 444 U.S. 620 (1980).

The Clearwater Ordinance conditions the exercise of this protected right on the submission to a massive regulatory scheme, which requires churches not only to gather and disclose enormous amounts of information, section 100.03(1)(a)-(o), (J20-J28), but to maintain records and documents supporting the disclosure required. Moreover, by means of these provisions as well as the provisions granting the city attorney broad investigatory powers, section 100.06, (J44-J48), the ordinance subjects churches to comprehensive and ongoing government scrutiny of their budgets and disbursements. Such massive record keeping requirements not only unduly burden church's resources so as to inhibit the free exercise of religion, but the mere information gathering by the government creates excessive entanglement between church and state. *Catholic Bishop,* 440 U.S. at 502; *see also Surinach* v. *Pesquera de*

Busquets, 604 F.2d 73, 89 (1st Cir. 1979), (compelled disclosure of costs and disbursements of Catholic School has potential to chill decision making process of church because of the threat that its decision will become the subject of public hearings and if found wanting will be supplanted by governmental control).

As is evident from the foregoing discussion, the Clearwater Ordinance not only offends the religion clauses of the First Amendment, but, because it regulates a substantial amount of protected expression, it is also impermissably overbroad. *See, e.g., Schaumburg* v. *Citizens for Better Environment,* 444 U.S. 620 (1980); *Gooding* v. *Wilson,* 405 U.S. 518 (1972); *Thornhill* v. *Alabama,* 310 U.S. 88 (1940).

As discussed above, the right of churches to peacefully solicit from their own members on their own premises is absolutely protected under the First Amendment, as is their right to determine matters of religious doctrine and policy. In the guise of regulating fraud in solicitations, however, the Clearwater Ordinance irreparably curtails and inhibits these rights.

Although the state may impose narrow and precise regulations to prevent fraudulent solicitations, *Murdock* v. *Pennsylvania,* 319 U.S. 105 (1943); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940), by virtue of the fact that the Clearwater Ordinance affects the aforementioned substantial and protected activities it is clear that the ordinance in no way satisfies this requirement.

The state may only legitimately regulate fraud or other abuses when "activities begin to affect or collide with liberties of others or of the public." *Prince* v. *Massachusetts,* 321 U.S. 158, 177 (1944) (Jackson J. concurring and dissenting on other grounds); *see Founding Church of Scientology* v. *United States,* 409 F.2d 1146, 1156 n. 32 (D.C.

1969) *cert. den.* 396 U.S. 963 (1969); *Estate of Supple,* 247 Cal. App. 2d 410, 55 Cal. Rptr. 542 (1966) *cert. den.* 389 U.S. 820 (1967); L. Tribe, *American Constitutional Law* ¶¶ 14-12 pp. 865-880. Thus, although the state may therefore enact regulations aimed at preventing imposters from soliciting for religious causes and at ensuring that money solicited for specific charitable causes is given to those causes, it may not, as attempted by the City of Clearwater, seek simply to oversee and dictate the internal functioning of a church and to pass judgment on how money solicited for general church purposes is spent by the church. That the Clearwater Ordinance is aimed primarily at these protected activities is evident from the face of the statute itself. Indeed, most of the record keeping requirements seek information about the internal affairs of organizations, rather than about the identity of the solicitors or about whether money solicited for specific and identified purposes is used for these purposes. Thus, the Clearwater Ordinance clearly extends and intrudes the state's authority far beyond the outer reaches of permissible First Amendment boundaries.

Finally, the Clearwater Ordinance runs afoul of the First Amendment because it is overly vague and thus delegates authority without meaningful limitations, thereby giving government officials the power to enforce the provisions of the ordinance in an arbitrary and discriminatory fashion. *Kolender* v. *Lawson,* 461 U.S. 352 (1983); *Grayned* v. *City of Rockford,* 408 U.S. 104 (1972). For instance, the Clearwater Ordinance provides no standards by which the City Clerk is to determine the sufficiency of a registration statement and thus to grant or deny a permit. Section 100.03(2). (J28). Indeed, section 100.03(3), (J29), indicates that the City Clerk is empowered to grant or deny a permit "for any reason." Further, the City Attorney's power to investigate and prosecute violations of the ordinance are similarly ill-defined. Section 100.05(1)(b), (J40),

allows the City Attorney to determine the truthfulness and/or sufficiency of a registration statement and to prosecute churches if he finds that their statements are untruthful or insufficient. However, the ordinance provides no standards for how the City Attorney is to make these determinations. Similarly, although the City Attorney is authorized to initiate an investigation of an organization if ten "bona fide" complaints are filed against it, the ordinance provides no instruction as to what constitutes a "bona fide" complaint. Section 100.06 (1). (J45). Thus, the Clearwater Ordinance clearly vests local officials with the power to make *ad hoc* decisions in an arbitrary and discriminatory fashion in violation of the First Amendment.

Unless this Court grants *certiorari* to review the substantial and weighty issues of law regarding facial challenges under the First Amendment presented by the instant petition and, to review the merits of the Church's facial challenge, the Church will not only be forced to relitigate issues of fact and law regarding its standing, which were correctly decided by the district court, but a facially unconstitutional ordinance will remain in effect, inhibiting and chilling First Amendment rights of many people, not just members of the Church of Scientology. As this Court has more than once recognized, if this ordinance is allowed to remain unchallenged, society will be the loser.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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